

4-19-2016

## State v. Clendenon Appellant's Brief Dckt. 43803

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	S.C. NO. 43803
Plaintiff-Respondent,	)	
	)	CANYON COUNTY NO.
	)	CR 2014-1925
v.	)	
	)	
CHRISTOPHER E. CLENDENON,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Christopher E. Clendenon appeals from the district court's Order Denying Motion for Reduction of Sentence. Mindful that he did not provide any new or additional information, Mr. Clendenon asserts that the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence.

Statement of Facts and Course of Proceedings

On May 6, 2015, an Information was filed charging Mr. Clendenon with one count of lewd conduct and two counts of sexual abuse of child. (R., pp.21-23.) The charges

were the result of Mr. Clendenon contacting police to report his criminal actions, after his victim suggested that he should turn himself in. (PSI, p.3.)

Mr. Clendenon entered a guilty plea to lewd conduct. (R., pp.29-32.) Pursuant to plea negotiations, the remaining charges were dismissed. (R., p.64.) At sentencing, the State requested a life sentence, with ten years fixed. (Tr. 5/11/15, p.20, Ls.19-25.) Defense counsel recommended that the district court retain jurisdiction and impose an underlying sentence of fifteen years, with five years fixed. (Tr. 5/11/15, p.23, Ls.2-5.) The district court imposed a life sentence, with seven years fixed. (R., pp.65-66.)

Mr. Clendenon filed a timely Motion Pursuant to ICR 35. (R., pp.69-70.) The State objected to the motion. (R., pp.72-73.) The district court denied the motion. (R., pp.76-80.) Mr. Clendenon filed a Notice of Appeal timely from the district court's denial. (R., pp.82-84.)

### ISSUE

Did the district court abuse its discretion when it denied Mr. Clendenon's Idaho Criminal Rule 35 Motion for a Reduction of Sentence?

### ARGUMENT

#### The District Court Abused Its Discretion When It Denied Mr. Clendenon's Rule 35 Motion For A Reduction Of Sentence

A motion to alter an otherwise lawful sentence under Rule 35 is addressed to the sound discretion of the sentencing court, and essentially is a plea for leniency which may be granted if the sentence originally imposed was unduly severe. *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994) (citing *State v. Forde*, 113 Idaho 21 (Ct. App.1987) and *State v. Lopez*, 106 Idaho 447 (Ct. App. 1984)). "The criteria for examining rulings

denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable.” *Id.* (citing *Lopez*, 106 Idaho at 450). Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. See *State v. Reinke*, 103 Idaho 771 (Ct. App. 1982). “When presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion.” *State v. Huffman*, 144 Idaho 201, 203 (2007).

Mindful that Mr. Clendenon did not provide any new or additional information in support of his Rule 35 motion, as is required by *Huffman*, he asserts that the district court abused its discretion in denying his Rule 35 motion. In his Rule 35 motion, Mr. Clendenon noted that his sentence is excessive “in light of the facts, including that he self-reported the incidents [and] his lack of criminal history.” (R., p.69.) He asserted that some testing completed during his psychosexual evaluation showed that he was a low risk to re-offend, that he is amenable to treatment, and capable of being treated in the community. (R., p.70.)

Additionally, Mr. Clendenon has previously expressed his remorse for committing the instant offense. In *State v. Alberts*, 121 Idaho 204 (Ct. App. 1991), the Idaho Court of Appeals reduced the sentence imposed, “In light of Alberts’ expression of remorse for his conduct, his recognition of his problem, his willingness to accept treatment and other positive attributes of his character.” *Id.* at 209. Mr. Clendenon has expressed his remorse for committing the instant offense stating, “I would give anything to be able to

go back to my childhood and relive my life . . . I would change or redo many things . . . to not hurt the ones I love . . . I truly [sic] am sorry for my actions.” (PSI, p.12.) He also expressed his remorse again at the sentencing hearing. (Tr. 5/11/15, p.29, L.15 – p.31, L.6.)

Furthermore, in *State v. Shideler*, 103 Idaho 593, 594 (1982), the Idaho Supreme Court noted that family and friends support were factors that should be considered in the Court’s decision as to what is an appropriate sentence. *Id.* Mr. Clendenon has the support of his family and friends. He supplied letters of support from his father, Montell Clendenon; his sister, Shari Clendenon; his cousin, Cindy Gardner; and a friend, Bobby Lincoln. (PSI, pp.151-154.)

Based upon the above information, Mr. Clendenon asserts that the district court abused its discretion when it denied his Rule 35 motion. He asserts that his sentence should be reduced to a unified sentence of fifteen years, with five years fixed.

### CONCLUSION

Mr. Clendenon respectfully requests that the order denying his Rule 35 motion be vacated and the case remanded to the district court for further proceedings.

DATED this 19<sup>th</sup> day of April, 2016.

\_\_\_\_\_/s/\_\_\_\_\_  
ELIZABETH ANN ALLRED  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 19<sup>th</sup> day of April, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing a copy thereof to be placed in the U.S. Mail, addressed to:

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CRIMINAL DIVISION  
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\_\_\_\_\_/s/\_\_\_\_\_  
MARY ANN LARA  
Administrative Assistant

EAA/mal